No. 11749.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker, John S. Patten, Harris H. Hammond, A. L. Bergere, J. C. Bérgere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel,

Appellants,

vs.

Hattie M. Houck, as Administrator of the Estate of Stanley B. Houck, Deceased, Ruby E. Edling, Wilna M. Shepard, Hattie M. Houck, Ruth M. Hebberd, Minnie N. McKenzie, Howard H. McKenzie, Veronica K. Ghostley and H. W. Lewis,

Appellees.

Brief of Appellants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel.

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Appellees.

Brief of Appellants Harris H. Hammond, A. L. Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel.

This is an appeal from a final decree of the District Court of the Southern District of California, Central Division, quieting title in a suit brought by the Appellees against Appellants to quiet title to sixteen placer mining claims located in Imperial County, State of California.

Three sets of claimants are involved in this cause—the Appellees, the Appellants Harris H. Hammon, A. L.

Bergere, J. C. Bergere, Willard Wallace, Edna M. Wallace, James P. Delaney, Mary J. Delaney and Irvin S. Barthel, and the Appellants J. A. Jose, Olga Jose, Corda Lancaster, William Lancaster, Ella Jackman, John I. Jackman, George T. Renaker and John S. Patten (for convenience the last named Appellants will be referred to as the Jose Group).

Statement of Pleadings and Facts Disclosing Jurisdiction.

(1) The statutory provisions sustaining the jurisdiction of the District Court of the United States are found in Judicial Code of the United States, Section 24, amended (28 U. S. C. A. (41)). Jurisdiction of this Court is based upon Judicial Code Section 128, amended (28 U. S. C. A. (225)); Judicial Code, Section 238 (28 U. S. C. A. (345)).

(2) In their action to quiet title to the placer mining claims described in the Complaint, Appellees alleged that the jurisdiction of the District Court is founded on diversity of citizenship, existence of a Federal question and the amount in controversy [R. 1-3]. These allegations were admitted by the Answer of Appellees [R. 19] and stipulated to in the course of the trial [R. 63-64.]

The Complaint is in the usual form to quiet title. Appellees prayed for a judgment adjudging the property to be declared to be theirs, free and clear of any claims, and for an injunction against interference by Appellants with the possession of said lands [R. 6-9]. By their Answer Appellants denied the material allegations of the Complaint. Appellants alleged that they were the owners of the lands described therein, that the value thereof was in

excess of $100,000.00, and that their occupancy was rightful [R. 21].

By way of counter-claim against Appellees to quiet title, Appellants alleged that jurisdiction was based upon diversity of citizenship, the existence of a Federal question and the amount in controversy [R. 22-23]. Appellants alleged that they were the owners of the premises described by designated placer mining claims therein [R. 23] and sought a decree quieting Appellants' title thereto. The allegations of Appellants' counter-claim were repeated and made the basis of relief sought by way of cross-claim against the Jose Group [R. 26-29] who in their Answer denied the material allegations thereof and prayed to have their alleged title to the lands quieted as against Appellants [R. 31].

Statement of the Case.

This suit arises out of conflicting claims of Appellees and Appellants based upon their sixteen respective placer mining claims to certain land in Imperial County, State of California, in Sections 20, 21, 28 and 29, Township 14 South, Range 12 East, San Bernardino Base and Meridian. Appellees, Appellants and the Jose Group each assert title to sixteen identical 160 acre placer claims as association claims in the sections of land hereinbefore referred to.

The land contains deposits of montmorrillonite, which is a mineral of a clay-like composition and has value as a food supplement for poultry, cattle and agricultural products. On October 19th, 1920, these lands were, by order of the Secretary of the Department of Interior, pursuant to an Act of Congress, withdrawn from entry [R. 236]; and by Executive order, dated August 21st 1941, the lands were further withdrawn for the use of the War

Department for combat firing [R. 239; Pltf. Ex. 48]. These orders remained in effect until July 6th, 1945, at which time the Acting Secretary of the Interior revoked the 1920 order of withdrawal and the 1941 Executive order for combat firing ranges affecting the land, and issued an order for the reopening of the lands, which provided as follows:

> "This order shall not otherwise become effective to change the status of the lands until 10 A. M. on the 63rd day from the date on which it is signed, at which time the lands . . . shall become subject . . . to location, entry and patent, under the general mining laws . . ." [Pltf. Ex. 47.]

Under the provisions of this order, the lands were not open for entry until September 7th, 1945, at 10:00 o'clock, A. M.*

On September 6th, 1945, Appellees and Appellants both went upon the lands. Appellants' activities consisted solely in ascertaining the locations of the Government monuments or stakes designating the section corners and quarter corners [R. 267-269]. Appellees likewise explored the lands for the purpose of locating the Government survey stakes [R. 116]. But in addition, Appellees on this 6th day of September, which was one day before the date when the lands were legally open for entry, proceeded to do the following:

In each quarter section of the four sections they drove a board about four inches wide and four feet long into the ground. Each board had painted upon it the name of the claim and its legal description [R. 118-119]. Beneath the ground near the board in each case a hole was dug, into which was placed a Mason jar containing a duplicate

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*Appendix pp. 1 and 2.

of a Notice of Location, the original of which was subsequently recorded in the Office of the County Recorder of Imperial County [R. 68]. The last location notice was completed at 6:45 o'clock, P. M. on the 6th of September [R. 168]. In this manner sixteen such boards and notices were placed upon the various quarter sections involved.

On the following day, September 7th, 1945, both Appellants and Appellees again entered upon the lands. Appellees had prepared additional Notices of Location of the respective claims. Each such notice was dated September 7th and was executed by the locators. The activities of Appellees consisted solely of going from location to location and placing in each of the sixteen Mason jars which were in the ground, a notice of location dated September 7th, and leaving it with the notice placed in the jar on the previous day, September 6th [R. 126-127, 199-203].

Appellants located their claims upon the land as follows:

Sixteen Notices of Location in and to the lands had been prepared by them upon cardboards containing the name of the claim, names of the locators, date of location, acreage claimed and the legal description of the claim [R. 250]. Sixteen paper instruments, which were duplicates of the cardboard Notices, likewise had been prepared [R. 251]. All of these 32 instruments, both cardboard and paper, were signed by the Appellants [R. 251, 255-257]. The cardboard Notices were each tacked upon a board nailed to a stake approximately five feet long [R. 258]. On each of the sixteen quarter sections the Appellants drove a stake containing the respective cardboard Notice of Location relating thereto, identified by the name of the claim and its legal description.

Each stake was driven into the earth to the extent of one foot [R. 270, 272, 278, 283].

All of this work of staking was completed by Appellants between 10:00 o'clock in the morning and 2:15 in the afternoon of September 7th [R. 269, 292], and on September 7th at 10 A. M. true copies of the cardboard notices of location were recorded in the Office of the County Recorder of Imperial County, California [R. 259].

Nothing further was done on the land after the 7th day of September by either the Appellees or the Appellants until the 4th day of November, 1945, at which time a mining engineer, employed by Appellants, laid out upon the lands, locations for the excavation of trenches, pits and open cuts [R. 326-333]. Under the direction and supervision of the mining engineer, earth-moving equipment was engaged and utilized in excavating the open cuts for a period of five consecutive days up to the 12th day of November, 1945 [R. 326-327, 328, 333-334].

Each parcel of land described in each of Appellant's sixteen Notices of Location was thus excavated with open cuts. At least two hundred cubic yards of excavated material were removed from each of the parcels of land described in the sixteen claims [R. 338-340]. These earth-moving operations were worth $1.50 a cubic yard [R. 342].

It was during the progress of this excavation work that discovery was made by Appellants of the existence of Montmorrillonite [R. 338, 340, 341].

Subsequently, on November 24th, 1945, following the completion of their discovery work above set forth, and within ninety days of their postings of September 7th, Appellants recorded sixteen Notices of Location of their Placer Claims in the Office of the County Recorder of Imperial County. These Notices were entitled "Amended

Notice of Location of Placer Claim." In all respects, however, they were true copies of the original cardboard Notices posted upon the land in September. Each Notice contained the name of the claim, names of the locators, the date of location, the acreage claimed, to wit: 160 acres, the legal description of the property embraced within the claim and a statement of the performance of the discovery work. These Notices were signed by all of the Appellants [R. 353-354, Deft. Ex. KK].

Turning to the Appellees, the period following September 7th and until the last of November, 1945, is characterized by a complete lack of activity. They did not remain in possession of the claims. Except for occasional visits to the land in October and November, 1945, to inspect their Notices, Appellees did no work of any kind thereon until the last week in November [R. 133-134]. This was approximately ten days after Appellants had completed the performance of their discovery work and had discovered mineral. Appellees reentered the lands in the last week of November, 1945. They then excavated pits on the sixteen quarter sections [R. 136-142], in accordance with locations laid out upon the land by Appellees' engineer prior to September 7th, 1945 [R. 66, 67, 68, 135]. Montmorrillonite was not discovered in either the first or second locations dug by the Appellees [R. 136, 137]. With reference to the remaining fourteen locations, the record contains nothing as to the discovery of the mineral. Appellees spent $2402.00 in connection with this work of which $2085.90 was expended for labor, and the balance for other items [Pltf. Ex. 45, R. 153].

Subsequent to the excavation work above set forth, and on December 4th, 1945, Appellees recorded copies of their Notices of Location dated September 6th; and on December 5th they recorded copies of their Notices dated

September 7th. All copies thus recorded contained a statement of markings and a statement of discovery work performed. [Pltf. Exs. 6 to 21, incl.; Pltf. Exs. 22 to 37, incl.]

Specification of Errors.

(1) The Court erred in making its Finding of Fact No. V [R. 44-45], reading as follows:

> "That it is true that on the 7th day of September, 1945, the plaintiffs were the owners and entitled to the possession of those certain lands and premises situated in the County of Imperial, State of Californoa, known and described under the following Placer Mining Claims, all in Township 14 South, Range 12 East, San Bernardino Base and Meridian, and consisting of the numbers of acres, respectively, set opposite each name, to wit:

Name	*Description*	*Acreage*
Frigid No. 1	NW¼ of Section 29	160
Frigid No. 2	NE¼ of Section 29	160
Frigid No. 3	SW¼ of Section 29	160
Frigid No. 4	SE¼ of Section 29	160
Temperate No. 1	NW¼ of Section 21	160
Temperate No. 2	NE¼ of Section 21	160
Temperate No. 3	SW¼ of Section 21	160
Temperate No. 4	SE¼ of Section 21	160
Tropical No. 1	NW¼ of Section 28	160
Tropical No. 2	NE¼ of Section 28	160
Tropical No. 3	SW¼ of Section 28	160
Tropical No. 4	SE¼ of Section 28	160
Torrid No. 1	NW¼ of Section 20	160
Torrid No. 2	NE¼ of Section 20	160
Torrid No. 3	SW¼ of Section 20	160
Torrid No. 4	SE¼ of Section 20	160"

The foregoing Finding of Fact is specified as being erroneous for the reason that the evidence does not disclose that Appellees discovered Montmorrillonite prior to discovery by Appellants, and for the further reason that the evidence is insufficient to sustain the Findings of Fact hereinafter designated as being erroneous, and which are essential to the making of Finding No. V.

(2) The Court erred in making its Finding of Fact No. VII [R. 45], reading as follows:

> "That it is true that the plaintiffs fully complied with Sections 2303 and 2304 of the Public Resources Code of California, and with Sections 35 and 36 of Title 30, U. S. C. A."

The foregoing Finding of Fact is specified as being erroneous for the reason that there is no evidence that the Appellees posted Notices of Location on September 7th, 1945.*

(3) The Court erred in making its Finding of Fact No. VIII [R. 45-46], reading as follows:

> "That it is true that the plaintiffs clearly marked the boundaries of said property with posts which indicated the Sections claimed, and that Notices of Location of Placer Claims were posted and placed in jars near the post where they could not be destroyed by the elements, all in accordance with good recognized mining practice."

The foregoing Finding of Fact is specified as being erroneous for the reason that there is no evidence that the Appellees marked the property with posts on Septem-

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*See Appendix, pp. 2 and 3, where the provisions of Section 2303, California Public Resources Code, are set out.

ber 7th, 1945, or that Notices of Location of Placer Claims were posted on September 7th, 1945.

(4) The Court erred in making its Finding of Fact No. IX [R. 46], reading as follows:

> "That it is true that each notice so posted by plaintiffs contained a statement of the markings of the boundaries by reference to surveyed Sections, and that a duplicate copy of each notice was duly recorded, within ninety (90) days from date of posting, in the County Recorder's Office of Imperial County, California."

The foregoing Finding of Fact is specified as being erroneous for the reason that the evidence, as indicated under assignment of error No. 3 with reference to Finding No. VIII, is insufficient to sustain the finding that there was a posting on September 7th, 1945, of the Notices of Location.

(5) The Court erred in making its Finding of Fact No. X [R. 46], reading as follows:

> "That it is true that plaintiffs performed the necessary discovery work upon each of said Claims within the time permitted by law."

The foregoing Finding of Fact is specified as being erroneous for the reason that the evidence is insufficient to sustain the foregoing Finding in that it does not appear that Appellees performed at least $1.00 worth of work for each acre included in their claims within ninety days after the date of location, as required by Section 2305 of the Public Resources Code of California.*

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*The provisions of Section 2305 of the California Public Resources Code are found in the Appendix, pp. 3 and 4.

(6) The Court erred in making its Finding of Fact No. XXIV [R. 48], reading as follows:

> "That all of the denials of defendants' answers and all of the allegations and averments of said answers, and all the allegations and averments of defendants' cross-claims, adverse to and inconsistent with these Findings, are untrue."

The foregoing Finding of Fact is specified as being erroneous for the reason that the evidence shows that Appellants posted and recorded their Notices of Location as required by law, that they were prior in the discovery of the mineral, and that they complied with the provisions of Sections 2303, 2304* and 2305 of the Public Resources Code of California and the Acts of Congress relating to the perfection of mining claims.

(7) The Court erred in making its Conclusion of Law No. I [R. 48], reading as follows:

> "That the plaintiffs are the owners and entitled to possession of those certain Mining Claims described in plaintiffs' complaint."

The foregoing Conclusion of Law is specified as being erroneous for the reason that this Conclusion of Law is not supported by the evidence as is hereinbefore indicated in Specifications of Error Nos. 1, 2, 3, 4, 5, and 6 herein.

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*The provisions of Section 2305 are set forth in the Appendix p. 3.

(8) The Court erred in making its Conclusion of Law No. II [R. 49], reading as follows:

> "That the plaintiffs are entitled to a judgment quieting their title to said Mining Claims against the defendants and cross-claimants."

The foregoing Conclusion of Law is specified as being erroneous for the reason that this Conclusion of Law is not supported by the evidence as is hereinbefore indicated in Specifications of Error Nos. 1, 2, 3, 4, 5, and 6 herein.

(9) The Court erred in making its Conclusion of Law No. III [R. 49], reading as follows:

> "That the defendants and cross-claimants are entitled to take nothing by reason of their said cross-claims and cross-complaint."

The foregoing Conclusion of Law is specified as being erroneous for the reason that this Conclusion of Law is not supported by the evidence as is hereinbefore indicated in Specifications of Error Nos. 1, 2, 3, 4, 5, and 6 herein.

(10) The Court erred in making its Conclusion of Law No. IV [R. 49], reading as follows:

> "That the plaintiffs are entitled to their costs of suit incurred herein."

The foregoing Conclusion of Law is specified as being erroneous for the reason that this Conclusion of Law is not supported by the evidence as is hereinbefore indicated in the Specifications of Error Nos. 1, 2, 3, 4, 5, and 6 herein.

ARGUMENT OF THE CASE.

Summary of Argument:

I. In a Suit to Quiet Title to a Mining Claim General Principles Applicable to Quiet Title Actions Prevail, and Unless a Plaintiff Establishes His Own Title, He Cannot Recover by Reason of Any Alleged Weaknesses in the Defendant's Title.

II. In Order to Establish Title to a Placer Mining Claim, a Plaintiff Must Prove (1) a Discovery of Mineral by Him; and (2) Compliance With State Statutory Enactments Relating to the Posting of Notices of Location and Performance of Discovery Work. The evidence in this cause is utterly insufficient to establish a discovery of mineral by the Appellees. There is no evidence that they made a discovery of mineral either before or after discovery was made by Appellants.

III. The Acts and Proceedings Taken by Appellees for the Location of Their Respective Claims Were Defective and Insufficient to Establish a Title or Right Thereto. The evidence was totally insufficient to show compliance by Appellees with the provisions of the Public Resources Code of California relating to the posting of Notices of Location and the performance of the discovery work. The evidence affirmatively showed that Appellees did not post Notices of Location on the lands on September 7th, 1945. The posting which was done by them was accomplished on September 6th, 1945, at which time the lands were not open to appropriation by reason of the existence of an Executive Order wtihdrawing the lands from entry. The only acts

II.

Title to and Possession of a Mining Claim Cannot Be Sustained Unless the Claimant Establishes a Discovery by Him of Minerals.

There is a complete want and absence of evidence in this cause tending to show the Appellees discovered Montmorrillonite in or upon the lands described in their respective claims. The recitals of discovery contained in the sixteen Notices of Location introduced in evidence by Appellees [Plaintiffs' Exhibits No. 22 to 37, inclusive] are mere self-serving declarations and not evidence of discovery.

Cole v. Ralph, 252 U. S. 286, 303 (40 S. Ct. 321).

The only evidence concerning discovery is found in the testimony of the Appellee Harold W. Lewis. Lewis stated that he was on the property in 1942 at which time he picked up some samples from the land upon an open-face cliff. By hearsay these samples were said to have been analyzed and to have contained Montmorrillonite clay [R. 143]. Mr. Lewis' presence upon the land at that time was without right, since these lands had been withdrawn from entry and were assigned to the War Department for combat purposes [Pltf. Ex. 48, R. 239-240]. Furthermore, Mr. Lewis did not state from what particular portion of the land these samples were obtained, whether the same were in one or more quarter sections, nor the extent or amount of the clay in the samples. There is no testimony or evidence that a reasonable man would have been justified in expending money for the development of the land on the basis of the samples which Mr. Lewis obtained. Appellees did not discover clay upon the two sections they excavated in the last week of November, 1945; no evidence was offered by them regarding discovery in

any of the other fourteen claims which they excavated [R. 136, 137-145]. In evaluating this testimony in the light of the Court's Findings, we respectfully direct the Court's attention to the following principles of law relating to discovery:

(1) Discovery of minerals is an absolute prerequisite to the existence of a claimant's right or title to a placer mining claim. Revised Statute 2320 (30 U. S. C. A. (23)), provides as follows:

> ". . . no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located."

Revised Statutes 2329, 2331 (30 U. S. C. A. (35)), provides as follows:

> "Claims usually called 'placers,' including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; . . ."

Cole v. Ralph, 252 U. S. 286, 295 (40 S. Ct. 321), states as follows:

> "While the two kinds of location—lode and placer —differ in some respects, *a discovery within the limits of the claim is equally essential to both.*"

U. S. v. McCutcheon, 238 Fed. 575, 584, states as follows:

> "It is hornbook law, of course, that *the successful location or appropriation of mineral lands of any sort, to be valid must be accompanied by a 'discovery'* . . . In this behalf I can see no escape from the conclusion that, as against the Government, if the dependents had made such a location of, and 'discovery'

upon, the land in question, as to invest them with a right of property therein, they had made such location and 'discovery' as to entitle them, as a matter of law and of right, to a patent. Conversely, if they had made no such 'discovery' as to entitle them to a patent as against the Government, they had made no such 'discovery' as to vest them with rights in and to the property."

In *Steele v. Tanana Mines R. Co.,* 148 Fed. 678, 679 (C. C. A. 9), the Court states:

> "Although in some instances courts have questioned the necessity of an actual discovery of mineral upon gold placer ground, it is established by the decided weight of authority *that appropriate discovery is as necessary to the location of a placer claim* as to the location of a lode claim."

To the same effect see:

Hall v. McKinnon, 193 Fed. 572, 576 (C. C. A. 9).

The foregoing is also the California law, as appears from the following statement in *Tuolumne Consolidated Mining Company v. Maier,* 134 Cal. 583, 585 (66 Pac. 863):

> *"We take it to be the conceded law that there can be no valid location of a mining claim without an actual mineral discovery thereon (Erhardt v. Boaro,* 113 U. S. 535; *O'Reilly v. Campbell,* 116 U. S. 418); . . ."

(2) Discovery is the acquiring of knowledge that a placer claim contains minerals that are reasonably valuable for mining to an extent justifying a reasonably prudent man in expending time and money developing the claim

with the reasonable expectation of finding minerals in paying quantities.

40 C. J.—*Mining and Minerals*—Section 177, pages 784-785;

Cameron v. U. S., 252 U. S. 450, 459 (40 S. Ct. 410).

The foregoing rule was approved by this Court in *Charlton v. Kelly*, 156 Fed. 433 (C. C. A. 9), where it is stated as follows at page 436:

> "And we held that, *to constitute a discovery* sufficient to support the location of a gold placer claim as against another mineral claimant, it is not necessary that gold must have been found thereon in paying quantities, but that *there must have been such a disovery of gold as to give reasonable evidence that the ground is valuable for placer mining,* taking into consideration its character, location and surroundings."

The foregoing rule is also applied in California. In *Kramer v. Gladding, McBean & Co.*, 30 Cal. App. (2d) 98, 104 (85 P. (2d) 552), the Court states:

> " 'The well established test is that to constitute a valid location there must be such a discovery of mineral as that an ordinarily prudent man, not necessarily a miner, would be justified in expending his time and money thereon in the development of the property.' "

In this same connection it is established that a reasonable *belief* of the existence of mineral is not a substitute for *knowledge* of the existence, and a reasonable belief alone does not meet the test of discovery. This rule prevails both in the Federal cases and in California.

Iron Silver Mining Co. v. Reynolds, 124 U. S. 374, 383, 384 (8 S. Ct. 598); *Sullivan v. Iron Silver Mining Co.,* 143 U. S. 431, 441, 442 (12 S. Ct. 555); *Hopper v. Elliott,* 8 Cal. (2d) 734, 739 (68 P. (2d) 235).

A parallel case is found in *Garibaldi v. Grillo,* 17 Cal. App. 540 (120 Pac. 425), where a miner who was prospecting for gold, testified that he took out two pans of dirt from the land which he was told by other parties contained gold in paying quantities. In holding that the miner was not entitled to the ownership of the claim which he attempted to locate, the Court stated:

> " 'Where minerals have been found, and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met.'
>
> Tested by these principles, we cannot say that the learned trial court was without warrant in holding that plaintiffs fell short, in their evidence, of meeting the statutory requirements as to a discovery of valuable minerals. It is only necessary to turn back and read the evidence of plaintiff Garibaldi to confirm the conclusion reached by the trial court."

Furthermore, it is settled that mere surface indications do not constitute discovery. In *Chrisman v. Miller,* 197 U. S. 313, 321 (25 S. Ct. 468), it is stated:

> " '*It is not enough that there may have been some indications by outcroppings on the surface,* of the existence of lodes or veins of rock in place bearing gold or silver or other metal, to justify their designation as "known" veins or lodes. To meet that designation the lodes or veins must be clearly ascertained,

and be of such extent as to render the land more valuable on that account, and justify their exploitation.' "

Accord: *Charlton v. Kelly,* 156 Fed. 433, 435 (C. C. A. 9); *Nevada Sierra Oil Co. v. Home Oil Co.,* 98 Fed. 673 (C. C. Calif.). In the latter case the Court states at page 676 as follows:

> *"Mere indications of mineral, I repeat, do not constitute the discovery of the mineral itself.* If so, a location made upon the discovery of such indications, followed by the proper marking of the boundaries of the claim and the doing of the statutory amount of work within the prescribed time, whether the work resulted in the actual discovery of mineral or not, would entitle the locator to apply for, and upon due proof and payment receive, the government title to the land as mineral land; which obviously would not only be unauthorized by any provision of the statute, but would be in direct conflict with the sections already cited."

Applying the foregoing rules and principles to the evidence as disclosed by the Appellees' case, it is apparent that there is an utter failure of proof upon the issue of discovery. The only evidence offered by the Appellees was the statement of Mr. Lewis that he found a few samples in 1942 which someone told him contained the clay. There is no testimony that he knew that the lands contained clay; there is no showing as to what particular portion of the claims these samples were taken from; there is no evidence that he was justified in expending any money or time upon the basis of what he had learned from a hearsay statement as to the character of the con-

tent of the samples; finally, the samples were taken from the side of a cliff and, obviously, even if they did contain clay, were mere surface indications, insufficient to establish that Montmorrillonite existed upon the lands.

Since, therefore, discovery is an indispensable requirement to the establishment of a claim, it is evident that the Court erred in finding that the Plaintiffs were the owners and entitled to the possession of the mining claims described in their Complaint.

III.

The Acts and Proceedings Taken by Appellees for the Location of Their Respective Claims Were Defective and Insufficient to Establish a Title or Right Thereto.

In support of this statement, Appellants make two points:

(1) That Appellees failed to comply with the provisions of Section 2303a of the Public Resources Code of California requiring the location of placer claims to be made by posting a Notice of Location; and

(2) The provisions of Section 2305 of the Public Resources Code of California requiring at least one dollar's worth of work to be done within ninety days after the date of the location of any placer mining claim for each acre included in the claim.* Each of the foregoing points is hereinafter discussed.

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*The provisions of these Sections of the Public Resources Code are quoted in full in the Appendix, pp. 2 to 4.

(1) Appellees failed to locate their respective placer claims by posting notices upon a tree, rock in place, stone, post or monument, as required by Section 2303a of the Public Resources Code of California. The evidence is undisputed that the only posts placed upon the respective claims of the Appellees were those placed thereon September 6th, 1945, when the lands were not yet open to entry [R. 118-126]. On September 7th, when Appellees again went upon the lands, they did not repost the property; they merely inserted in the glass jars an additional Notice of Location bearing the date September 7th [R. 126, 199-203]. These glass jars were buried in the ground to the depth of four or five inches.

The requirements of Section 2303(a) are specific. Posting must be upon a tree, rock in place, stone, post or monument. None of these conditions was complied with by the Appellees on September 7th. The placing of the Notices in a glass bottle, which was buried in the ground, obviously fails to give that publicity or information contemplated by the Code section.

On the other hand, to allow the Appellees to take advantage of their premature and unauthorized acts of driving the stakes on September 6th, would be to permit an inequity and to condone a violation of the Executive Orders for the withdrawal of the lands and the reopening Order of the Secretary of the Interior, dated July 6th, 1945.

It is provided in the *Pickett Act*, 36 Stat. 847 (43 U. S. C. A. (41)), that

> "The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, . . . *and such withdrawals* or reservations *shall*

remain in force until revoked by him or by an Act of Congress."

A withdrawal of public lands by Executive Order operates as a severance thereof from the public domain. During the existence of the withdrawal, any act or proceeding taken for the initiation of a claim is void and cannot constitute the basis of any right. *U. S. v. Midwest Oil Co.,* 236 U. S. 459 (35 S. Ct. 309); *U. S. v. McCutchen,* 234 Fed. 702.

These principles are summarized in *2 Lindley on Mines,* Section 419A, page 986, where the author states:

> ". . . it is advisable in discussing the substances which are subject to location under the placer laws to invite attention to the fact that lands containing them may only be appropriated when found outside of withdrawal areas; in other words, such lands temporarily withdrawn are not 'public lands.' They remain in a state of reservation until freed by proclamation of the president or by an act of congress."

In view of these rules of law, it follows that the September 6th stakings on the part of Appellees were nullities and insufficient upon which to base any claim to the lands herein.

(2) The Appellees did not comply with the provisions of Section 2305 of the Public Resources Code requiring the performance of at least one dollar's worth of work for each acre included in their claims.

Under the provisions of the Public Resources Code of California, Section 2305, Appellees were required to perform "at least one dollar's worth of work for each acre included in the claim." Since the sixteen claims each contained 160 acres, Appellees were thereby required to

perform a total of $2560.00 worth of work. Although Appellees testified that they expended in *excess* of $160.00 for each claim [R. 138-142], and a total of $2600.00, the affirmative evidence in their time book and records discloses that the aggregate amount involved as expended by them for labor was $2085.90 [See Plaintiffs' Ex. 45]. In addition to labor, they paid $150.00 for picks and shovels, $5.00 for a steel tape, $80.00 for gasoline, $20.00 for canteens [R. 154-155], and $62.00 for services rendered by the engineer in staking the property on September 6th [R. 153], making a total of $317.00. These latter items do not constitute elements of labor or work; *Ricketts, American Mining Law,* Sec. 484; moreover, when this sum is added to the actual amount of $2085.90 spent by Appellees, the statutory minimum of $2560.00 is not met.

Moreover, and in view of the fact that Appellees introduced no competent evidence as to the manner in which the $2085.90 was apportioned among their respective sixteen claims, the burden of proving compliance with the provisions of Section 2305 of the Public Resources Code of California, as to any particular claim, was not met by them. Since Appellees did not affirmatively prove compliance with Section 2305, whatever rights they had, if any, were rendered null and void under the provisions of Section 2307, Public Resources Code which are as follows:

> "The failure or neglect of the locator or locators to comply with the requirements of sections . . . 2305 . . . of this code shall render the location null and void, . . ."

Furthermore, in measuring Appellees' compliance with the provisions of Section 2305, it is well settled, that the

test with reference to the performance of the work is not the amount *spent* but the reasonable value thereof. On this point *McKirahan v. Gold King Mining Co.,* 39 S. Dak. 535, 165 N. W. 542, the Court states:

> "To show that the work was not worth as much as it was found to be by the court, appellant introduced evidence showing the number of men that had been employed to do said work, the length of time they were engaged, the amount of wages received and the amount and cost of material, etc., that was used. By adoping this method of computing value, appellant showed that the work performed by the respondent did not amount to more than $77.11 per claim for the year 1914. *But this is not the correct method of computing the value of assessment work on a mining claim. The true test is the actual value of the improvement to the mine. Evidence of the cost of labor, material, etc., is competent as tending to show the good faith of the party making the expenditure; but it is not conclusive upon the question of the value of such improvement."*

To the same effect see *Stolp, et al. v. Treasury Gold Mining Co.,* 38 Wash. 619, 80 Pac. 817, where the Court states:

> "No question is made as to the qualification of the witnesses to estimate the value of the work. One of them stated that the reasonable value of such work was $9.00 per foot, and one of the witnesses said that the work was done in 7½ days, by the three of them working together, and that the going wages for such work was $5.00 per day per man. This witness also said that the miners' wages were $3.50 per day. Appellant argues from this last statement that the value of the work done did not

amount to $100.00. *The test for determining the value of the work done upon a mining claim is the reasonable value of the work, not what was paid for it or what the contract price was.* Lindley on Mines. While the rate of wages and the cost of the work are strong elements in establishing value, these elements are not conclusive of the value of the work done."

See, also to the same effect: *Standard Shales Products Company,* 52 L. D. 522; *McCulloch v. Murphy, et al.,* 125 Fed. 147; *Whalen Consolidated Copper Mining Co. v. Whalen, et al.,* 127 Fed. 611; *McKay, et al. v. Nevesler,* 148 Fed. 86.

IV.

The Acts and Proceedings Taken by the Appellants Clearly Established Their Right and Title to the Lands Described in Their Mining Claims.

(1) The Appellants fully complied with the provisions of the Public Resources Code of California pertaining to the posting of Notices of Location, the recordation of the same and the performance of discovery work; and (2) the Appellants made discovery of Montmorrillonite. They were thereby prior in right to Appellees. Each of these points is hereinafter discussed:

(1) The Appellants fully complied with the provisions of the Public Resources Code of California pertaining to the posting of Notices of Location, the recordation of the same and the performance of discovery work.

As is hereinbefore indicated, see pages 5 and 6 of this brief, Appellants on September 7th, 1945, posted in each of the sixteen quarter sections a cardboard Notice of Location containing the name of the claim, names of

the locators, date of location, the acreage claimed, and the legal description of the property. These Notices were on five foot stakes, sunk into the earth to a depth of one foot, and were of a size which was conspicuous to all who desired information.

On November 24th, 1945, and well within the ninety-day statutory period prescribed by Section 2313 of the Public Resources Code of California, Appellants recorded in the Office of the County Recorder of Imperial County, State of California, true copies of these cardboard Notices so posted upon the property by them on September 7th [see Deft. Exs. KK]. While the Notices thus recorded were each entitled "Amended Notice," these Notices were true copies of the posted Notices for they contained the identical name of the claim, names of the locators, date of location, the acreage claimed, and the legal description of the property.*

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*Defendants' Exhibits A to P, inclusive, although recorded on September 7th, 1945, were introduced and admitted for the sole purpose of having in evidence true copies of the cardboard Notices posted upon the property [R. 349]. By inspection of these two sets of exhibits [Defendants' Exs. A to P, inclusive, and KK], it will be seen that Defendants' Exhibits KK are true copies of Defendants' Exhibits A to P, inclusive, and hence, true copies of the original cardboard Notices posted on the property.

The Trial Court was of the opinion that the Amended Notice was not a true copy because it contained the statement of the markings and statement of performance of the discovery work, which were not contained on the cardboard Notices [R. 37]. This error is obvious for these additions are specifically required by Section 2313 of the Public Resources Code of California. To comply with the statute the locator must record a true copy of the original notice of location, together *"with a statement of the markings of the boundaries as required . . . and of the performance of the required discovery work in the office of the county recorder."* within ninety days after posting the notice of location. Thus, the very language of the statute contemplates that the true copy to be recorded by a locator will contain matters not found in the original notice of location posted by him.

The fact that the Notices recorded on the 24th day of November were entitled "Amended Notice of Location of Placer Claim" does not make them any the less true copies of the original cardboard Notices posted upon the property for this Court has expressly held that a "true copy" provision of a statute is satisfied by recording a "substantially true copy," and that an "exact copy" is not required.

In *Oregon King Mining Co. v. Brown*, 119 Fed. 48 (C. C. A. 9),this Court laid down the following rule, at page 57 of the opinion:

> ". . . it becomes necessary to decide but one other of the questions presented by the appeal; and that is whether or not it be necessary that the copy of the notice of location required by the Oregon statute to be recorded be a literal and exact copy of the notice posted. *We think it clear that it need only be a substantial copy.*"

This rule prevails in California, as appears in *Mitchell v. Hutchinson,* 142 Cal. 404, 410, 411 (76 Pac. 55), and *Green v. Gavin,* 11 Cal. App. 506, 509 (105 Pac. 761).

The foregoing authorities clearly sustain the proposition that the Amended Notices of Location, recorded on November 24th, 1945, were true copies of the cardboard Notices previously posted on the property by the Appellants. Compliance by Appellants with the recordation provision of Section 2313 of the Public Resources Code of California was therefore fully established.

Turning to the discovery work required to be performed by locators, the evidence is undisputed that Appellants fully complied with the provisions of Section 2304 and 2305 of the Public Resources Code of California. Between the 4th and 12th day of November, 1945, Appel-

lants excavated two hundred cubic yards of material from fourteen of their claims and two hundred fifteen cubic yards from the remaining two claims [R. 338-340]. The total cubic yardage thus removed was 3230 cubic yards. The reasonable value and worth of the work performed was at the rate of $1.50 per cubic yard [R. 342], or a total of $4845.00 for the work performed upon the entire sixteen claims. Each claim was thus far above the statutory minimum both as to cubage removed and value of work performed.

(2) The Appellants made discovery of Montmorrillonite and were thereby prior in right to Appellees.

At pages 6 and 7 of this brief, it is pointed out that Appellants discovered mineral on the lands herein involved between November 4th and November 12th, 1945, and that at no time previous thereto did the Appellees make a discovery. In addition, it is shown that Appellees had not complied with the California statutes governing the posting of notices of location. Under such circumstances the superior right and title of Appellants attached on November 12th, 1945; they had previously posted their Notices of Location; and they had performed the required discovery work. The only remaining duty was that of recording copies of their Notices of Location together with a statement of the discovery work performed. This duty was discharged by them on November 24th, 1945, and within ninety days from the date of their original posting of Notice of Location in September. Having thus established their right and title to their respective claims,

no act upon the part of Appellees in entering upon the land or excavating the same would operate to deprive Appellants of their rights. As is stated in *Swanson v. Sears,* 224 U. S. 180, 181 (32 S. Ct. 455):

> "A location and discovery on land withdrawn *quoad hoc* from the public domain by a valid and subsisting mining claim is absolutely void for the purpose of founding a contradictory right. *Belk v. Meagher,* 104 U. S. 279. *Gwillim v. Donnellan,* 115 U. S. 45."

This Court follows the rule that a subsequent attempted location of ground, upon which there is a prior valid and subsisting location supported by discovery in compliance with local statute, is wholly void. See: *Hall v. McKinnon,* 193 Fed. 572, 577 (C. C. A. 9); *Becker v. Long,* 196 Fed. 721, 722, 723 (C. C. A. 9).

On the other hand, assuming *arguendo,* that Appellees had complied with the provisions of the Public Resources Code of California governing the posting of their Notices of Location, that fact alone would not deprive Appellants of the right to enter the property peaceably and complete their own location by discovery. Of vital importance on this point is the fact that nothing was done upon the property by Appellees after September 7th until the last week in November [R. 133, 134] They were not in possession of the lands by enclosure by the performance of any work, or in any other manner. At most they did not rise above the status of speculative explorers whose rights, if any, were subject to termination by prior discovery on the part

of Appellants. This proposition is forcibly illustrated in the following cases in the Supreme Court in this Circuit and in California:

In *Erhardt v. Boaro,* 113 U. S. 527, 535, 536 (5 S. Ct. 560), the opinion of the Court contains the following pertinent language:

> "In all legislation, whether of Congress or of the State or Territory, and by all mining regulations and rules, *discovery and appropriation are recognized as the sources of title to mining claims,* and development, by working, as the condition of continued ownership, until a patent is obtained. And whenever preliminary work is required to define and describe the claim located, *the first discoverer must be protected in the possession of the claim* until sufficient excavations and development can be made, so as to disclose whether a vein or deposit of such richness exists as to justify work to extract the metal. *Otherwise, the whole purpose of allowing the free exploration of the public lands for the precious metals would in such cases be defeated, and force and violence in the struggle for possession, instead of previous discovery,* would determine the rights of claimants. . . . This allowance of time for the development of the character of the lode or vein does not, as intimated by counsel, give encouragement to mere speculative locations, that is, to locations made without any discovery or knowledge of the existence of metal in the ground claimed, with a view to obtain the benefit of a possible discovery of metal by others, within that time. *A mere posting of a notice* on a ridge of rocks cropping out of the earth, or on other ground, *that the poster has located thereon a mining claim, without any discovery or knowledge on his part of the existence of metal there,* or in its immediate vicinity,

would be justly treated as a mere speculative proceeding, and would not itself initiate any right. There must be something beyond a mere guess on the part of the miner to authorize him to make a location which will exclude others from the ground, such as the discovery of the presence of the precious metals in it, or in such proximity to it as to justify a reasonable belief in their existence. Then protection will be afforded to the locator to make the necessary excavations and prepare the proper certificate for record."

In *Belk v. Meagher,* 104 U. S. 279, 287, the Court in determining priorities stated as follows:

"He had made no such location as prevented the lands from being in law vacant. Others had the right to enter for the purpose of taking them up, if it could be done peaceably and without force. . . . No one contends that the defendants effected their entry and secured their relocation by force. They knew what Belk had done and what he was doing. He had no right to the possession, and was only on the land at intervals. There was no enclosure, and he had made no improvements. He apparently exercised no other acts of ownership, after January 1, than every explorer of the mineral lands of the United States does when he goes on them and uses his pick to search for and examine lodes and veins. As his attempted relocation was invalid, his rights were no more than those of a simple explorer. In two months he had done, as he himself says, 'no hard work on the claim,'

and he 'probably put two days' work on the ground.' This was the extent of his possession. . . . The possession by Belk was that of a mere intruder, while that of the defendants was accompanied by color of title."

In *Cole v. Ralph,* 252 U. S. 286, 294, *et seq.* (40 S. Ct. 321), the Court states:

"In advance of discovery an explorer in actual occupation and diligently searching for mineral is treated as a licensee or tenant at will, and no right can be initiated or acquired through a forcible, fraudulent or clandestine intrustion upon his possession. *But if his occupancy be relaxed, or be merely incidental to something other than a diligent search for mineral, and another enters peaceably, and not fraudulently or clandestinely, and makes a mineral discovery and location, the location so made is valid and must be respected accordingly. Belk v. Meagher,* 104 U. S. 279, 287; *Union Oil Co. v. Smith,* 249 U. S. 337, 346-348, and cases cited.

A location based upon discovery gives an exclusive right of possession and enjoyment, is property in the fullest sense, . . . Location is the act or series of acts whereby the boundaries of the claim are marked, etc., but it confers no right in the absence of discovery, both being essential to a valid claim."

In *Johanson v. White,* 160 Fed. 901 (C. C. A. 9), the Court states as follows:

"Both the locaters being in possession by common consent, as they were after June 8th, it became a race of diligence between them to discover gold, and

> he who first discovered it undoubtedly obtained the prior right. His discovery did not relate back to the date of his location; but his location was made valid by discovery, and took effect from that date, and it gave him the full right in the claim, to the exclusion of all others. This is well established by the authorities."

The foregoing rule obtains in the State of California: *New England Oil Co. v. Congdon,* 152 Cal. 211, 215 (92 Pac. 180); *McCleary v. Braddus,* 14 Cal. App. 60, 66 (111 Pac. 125).

Applying the principles set forth in the foregoing cases, it is apparent that Appellees having failed to discover clay, must yield to the superior right of Appellants by reason of the latters' prior discovery. Appellees did nothing upon the property after posting their Notices of September 6th, 1945, and inserting duplicate Notices in the glass bottles on September 7th. Appellants rightfully posted their Notices on the 7th day of September. Appellees did not remain in possession and took no steps to assert any claims against Appellants on and after the 7th day of September. The Court specifically found that the Appellants did not enter the property forcibly [see Findings XV, XVI, XVII and XIX, R. 47-48]. The record supports, without contradiction, the open and peaceable entry of Appellants in the performance of their excavation work upon each of their claims, as the result of which they discovered the clay and established their location and superior title.

V.

In an Equity Case Where the Findings of Fact Are Against the Uncontradicted Evidence, and the Conclusions of Law and Decree Are Thereby Erroneous, the Circuit Court Will Direct the Lower Court to Render the Proper Judgment.

In an equity case an appeal brings up the entire record and the appellate court is authorized to review the evidence and make such order or decree as should have been made by the trial court. *Keller v. Potomac Electric Co.,* 261 U. S. 428 (43 S. Ct. 445, 449); *Union Central Life Insurance Co. v. Imsland,* 91 F. (2d) 365, 368 (C. C. A. 8); *MacGowan v. Barber,* 127 F. (2d) 458, 461 (C. C. A. 2).

In reviewing the evidence the Circuit Court is not bound by findings which are against the clear weight of the evidence, nor by findings which are in conflict with all of the evidence in the record, touching the fact found. Upon such review and in proper cases the Circuit Court will finally dispose of the litigation; if erroneously decided by the District Court, the appellate court will reverse the decree and order a proper judgment entered. *Hooper v. First Exchange Nat. Bank of Coeur D'Alene,* 53 F. (2d) 593; *U. S. v. Mitchell,* 104 F. (2d) 343, 346.

We urge that the record in this appeal presents the occasion for the proper exercise by the Court of its powers to reverse and enter the decree which should have been originally rendered by the District Court in favor of Appellants. As has been indicated in this brief, the record reveals no conflict of evidence relating to the material issues herein. Without dispute, the evidence shows that the Appellees did not discover mineral at any time; it affirmatively appears that they failed to comply with

the provisions of the Public Resources Code of California requiring the posting of Notices of Location and the performance of one dollar's worth of work per acre upon their claims. On the other hand, and in contrast thereto, the undisputed evidence discloses that Appellants discovered mineral and fully complied with all statutory requirements. It follows, therefore, that Appellees did not establish any right or title to their claims, but, on the contrary, that the Appellants clearly and indisputably proved all the facts necessary to the establishment of their right and title to the lands. Under these circumstances the Circuit Court should reverse the decree and direct the trial court to render a proper judgment quieting Appellants' right and title to their claims as against the Appellees.

Conclusion.

We believe that we have demonstrated herein that the Findings of the trial court are not justified by the evidence and that the decree in favor of Appellees is clearly erroneous. Appellees completely failed to support the allegations of their Complaint; on the contrary; the evidence manifestly requires Findings and a Decree in favor of Appellants who did establish their right and title to the claims involved herein. On principle, precedent and authority set forth in this brief, it is therefore respectfully submitted that the decree of the District Court be reversed with instructions to render a decree in favor of Appellants quieting their title as against Appellees.

Respectfully submitted,

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APPENDIX.

TITLE 43—PUBLIC LANDS; INTERIOR.

Chapter 1—General Land Office.
Appendix—Public Land Orders.
(Public Land Order 287)
California.

Revoking in Part Executive Order 8865 and Opening Lands Under Applicable Laws.

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, and to the act of April 23rd, 1932, 47 Stat. 136, it is ordered as follows:

Executive Order No. 8865 of August 21, 1941, withdrawing public lands for the use of the War Department for combat firing ranges and maneuver purposes, is hereby revoked so far as it affects the following described lands:

San Barnardino Meridian.

T. 14 S, R. 12 E.
Secs. 20, 21, 28 and 29.

The areas described aggregate 2,560 acres.

The jurisdiction over and use of such lands granted to the War Department by Executive Order No. 8865 shall cease upon the date of the signing of this order. Thereupon, the jurisdiction over and administration of such lands shall be vested in the Department of the Interior, under the order of October 19, 1920, of the Secretary of the Interior, withdrawing the lands for reclamation purposes under the provisions of the act of June 17, 1902, 32 Stat. 388.

This order shall not otherwise become effective to change the status of the lands until 10:00 A. M. on the 63rd day from the date on which it is signed, at which time the lands subject to valid existing rights and the provisions of the then existing withdrawals, shall become subject to the laws applicable to lands affected by such withdrawals, and to location, entry, and patent, under the general mining laws subject to the terms of the following stipulations and to the regulations contained in Section 185.36 of Title 43 of the Code of Federal Regulations (Circular No. 1275, June 22, 1932, 53 ID 706):

* * * * * * * *

ABE FORTAS,
Acting Secretary of the Interior.

July 6, 1945.

Section 2303 of the Public Resources Code of California provides as follows:

> "The location of a placer claim shall be made in the following manner:
>
> (a) By posting thereon, upon a tree, rock in place, stone, post, or monument, a notice of location, containing the name of the claim, name of the locator or locators, date of location, number of feet or acreage claimed, and such a description of the claim by reference to some natural object or permanent monument as will identify the claim located.
>
> (b) By marking the boundaries so that they may be readily traced.
>
> Where the United States survey has been extended over the land embraced in the location, however, the claim may be taken by legal subdivisions and no

other reference than those of such survey shall be required, and the boundaries of a claim so located and described need not be staked or monumented. The description by legal subdivisions shall be deemed the equivalent of marking."

Section 2304 of the Public Resources Code of California provides as follows:

(a) Within ninety days after the date of location of any lode mining or placer claim hereafter located, the locator or locators thereof shall sink a discovery shaft upon the claim to a depth of at least ten feet from the lowest part of the rim of the shaft at the surface, or shall drive a tunnel, adit, or open cut upon the claim to at least ten feet below the surface.

(b) In lieu of the discovery work required by paragraph (a) of this section, the locator of a placer mining claim may, within ninety days of the date of location, excavate an open cut upon the claim, removing from the cut not less than seven cubic yards of material.

Section 2305 of the Public Resources Code of California provides as follows:

"Within ninety days after the date of location of any placer mining claim hereafter located containing more than twenty acres, the locator or locators thereof shall perform at least one dollar's worth of work for each acre included in the claim. This work may all be done at one place on the claim if so desired, and shall be actual mining development work exclusive of cabins, buildings, or other surface

structures. Nothing in this section shall be construed as a modification of the requirements of Section 2304 of this code."

Section 2313 of the Public Resources Code of California provides as follows:

"Within ninety days after the posting of his notice of location upon a lode mining claim, placer claim, tunnel right or location, or mill site claim or location, the locator shall record a true copy of the notice together with a statement of the markings of the boundaries as required, in this chapter, and of the performance of the required discovery work, in the office of the county recorder of the county in which such claim is situated. The county recorder shall receive a fee of one dollar ($1) for this service."